IN THE HIGH COURT OF DELHI AT NEW DELHI

Bail Application No.750/2007

Sh. Sumer Singh ..... Petitioner
! through: Mr. Ramesh Gupta, Advocate with
Mr. Ankur Singhal, Advocate

VERSUS

$ State ..... Respondent
^ through: Mr. Anil Soni, Advocate

% **D**ATE OF DECISION: 03-09-2007

CORAM:

* **Hon'ble Mr.Justice Pradeep Nandrajog**

1. Whether reporters of local papers may be allowed to see the judgment? Y

2. To be referred to the Reporter or not? Y

3. Whether judgment should be reported in Digest? Y

: PRADEEP NANDRAJOG, J.

FIR No. 285/2005 dated 24.4.2005
U/S. 302/120B/34 IPC read with Sections
25/27/54/59, Arms Act
PS: Najafgarh.

1. Petitioner is an accused in aforenoted FIR. Charges have been framed against him under Section 302/120B/34 IPC.

2. As per the FIR two boys on a scooter came from the side of Dhichaun Depot and in front of a gali fired at two women. Both women died at the spot. The two boys ran away. Investigation revealed that the deceased women were Ms. Beermati and Ms. Raj Bala.

3. Both women were real sisters.

4. Raj Bala was the wife of one Ranbir examined as PW3. Beermati was the wife of Dharamvir. This was the second marriage of Dharamvir. Dharamvir had been murdered in the year 2000.

5. According to the prosecution, investigation revealed that accused Jaivir was born to Dharamvir and his first wife. He wanted to liquidate Beermati for the reason she was demanding a share in the property of late Dharamvir. Petitioner, Sumer is stated to be the real brother of Dharamvir. According to the prosecution, petitioner along with his two sons Harbir and Satbir as also his father Ran Singh were siding with Jaivir. All i.e. Ran Singh, petitioner, Harbir, Satbir and Jaivir hatched a conspiracy to kill Beermati. Further case of the prosecution is that in the month of October 2004, Ran Singh had telephoned Beermati to visit him at his house in Laxmi Vihar. She along with her brothers had visited, Laxmi Vihar where they were assaulted by Jaivir, Harbir and the petitioner. Even Ran Singh was alleged to have attacked Beermati and persons accompany her. That after about 6 months i.e. in the month of April 2005, Harbir and Jaivir spoke to Raj Bala and asked her to talk to Beermati. They told Raj Bala that the dispute pertaining to the property needs to be settled through negotiations. Raj Bala conveyed said message to Beermati.

That on the day of the incident, i.e. 24.4.2005 Beermati, Raj Bala, one Raghubir and Balraj examined as PW-4 went to Najafgarh. They reached the house of Ran Singh where Sumer, Harbir, Jaivir and Satbir were present. Ran Singh told them that it would be better to talk at his house in Laxmi Vihar. All of them left for Laxmi Vihar. Jaivir and Harbir were on a scooter. As they neared residence of Ran Singh at Laxmi Vihar, Ran Singh exhaulted:-

> 'Let the issue be decided today. Whatever property has to be given may be shown'.

6. At that time, Jaivir and Harbir fired at the two ladies. Both died.

7. Ran Singh has died during pendency of the trial.

8. Seeking bail for the petitioner it is urged by learned counsel for the petitioner that the prosecution has examined the stated eye witnesses to the incident being 3 persons namely, Ranbir Singh, husband of Raj Bala as PW-3, Balraj, brother of Beermati and Raj Bala as PW-4 and Dharam Pal also brother of Beermati and Raj Balaas PW-9. Counsel urges that PW-3 and PW-9 have not supported the case of the prosecution.

9. This fact is admitted by learned counsel for the State.

10. Bail was pressed on the ground that PW-4, Balraj stands dis-credited in his cross examination and if his

testimony has to be discarded, the prosecution would have no case to stand.

11. Learned counsel for the State submits that notwithstanding PW-3 and PW-9 turning hostile, testimony of PW-4 as also the motive for the offence is sufficient to nail the accused persons. Further, counsel submits that at this stage, it is not permissible for this court to appreciate evidence in piecemeal.

12. Before proceeding further, it may be noted that this is the second application seeking bail filed by the petitioner. His earlier application being Bail Application No. 2219/2005 was withdrawn on 10.11.2005 with the express statement that liberty be granted to the petitioner to file fresh application for bail after eye witnesses Balraj and Ranbir were examined.

13. Thus, since eye witnesses have been examined, there being a material changed in circumstances, present application can be considered on merits.

14. As noted above, witnesses of the prosecution save and except Balraj PW-4 have turned hostile. Thus, for success, prosecution has only testimony of PW-4 to sustain the conviction.

15. In his examination-in-chief, PW-4 has deposed to the relevant facts in harmony with the case of the prosecution. But, what has been pointed out by learned counsel for the

petitioner is certain admissions by Balraj wherefrom, learned counsel seeks to urge that his presence at the spot is doubtful.

16. Two points were highlighted by learned counsel for the petitioner. The first point urged is that pertaining to the incident stated to have taken place in the month of October 2004, admittedly brothers of Beermati were named as the accused persons who had attacked Jaivir and his cousin brothers and in respect thereof Balraj was facing a criminal trial.

17. Counsel urged that in view of said past enmity it was unbelievable that Balraj would have dare visited the village of the petitioner and the co-accused. Secondly, counsel urged that in his cross examination, when questioned as to why Balraj did not take his sisters to the hospital or why did he not informe the police if he was present at the spot when the firing took place, PW-4 deposed as under:-

> "Out of fear I ran at a distance of about 150 ft. till we reached the bus stand and while we were running a tempo reached there and we boarded. There was no other passenger in the tempo. The tempo was going to Nangloi. We got down on the way after covering a distance of about 7-8 kms. But I do not know the name of the place. During these 7-8 kms we came across a police barricade. When we were sitting in the tempo nobody chased us. We did not inform any police officer at the barricade about the incident. After reaching a particular place covering 7-8 kms, there was a bus stand and public was also present there and from where we boarded a

> DTC bus for Nangloi. There were passengers in the bus. We did not inform the bus driver and the conductor about the murder. Nangloi bus stand is a very big place. There were several persons including police persons and telephone booths were also there. But we did not inform anyone at that place. We were only concerned without own safety and as such we did not inform the police at 100 number nor we were concerned to get our sisters removed to the hospital to save them. From Nangloi we went to Narela from bus and from Narela we took jeep for village Mandora. There were other persons in the jeep who were travelling for village Mandora. We reached Mandora around 5/5.30 p.m. At Narela we waited for the jeep for about 1½/2 hrs. During those 2 hrs. we did not contact any police official. It is correct that there was police post at Narela but we did not inform them about the incident."

18. Counsel urged that such a conduct was inconsistent with the behaviour of a person who has witnessed the double murdered of his sisters.

19. On the issue of motive, learned counsel urged that petitioner would have gained nothing by killing Beermati. If at all, sole beneficiary of the mother was Jaivir.

20. No doubt, at this stage, I am not required to threadbare examine the testimony of the witnesses, but that would not mean that his court would be totally prohibited from having a bird's eye view of the testimony of the witnesses.

21. Certainly, it may be arguable that the court, at this stage, cannot threadbare analyze the evidence i.e. start identifying consistent or inconsistent evidence and this exercise has to await final trial. But, where prosecution case

appears to be weakening, justifying grant of bail, limited exercise of prima facie evaluating the evidence can be carried out by this court.

22. I find considerable merit in submissions made by learned counsel for the petitioner. Two out of three eye witnesses of the prosecution have turned hostile. There is probability of the third not being present at the spot, evidenced by his conduct; conduct being revealed from his testimony aforenoted. It is probable that the reason for not informing the police by PW-4 is a cover up attempt to justify an abnormal conduct of an eye witness to an incident.

23. Lastly, considering the age of the petitioner and the possibility of all family members being falsely implicated not being ruled out coupled with the fact that all the eye witnesses have been examined, I hold that case is made out to release petitioner on bail.

24. Petition stands disposed of directing learned Trial Judge to release petitioner on bail on petitioner furnishing a personal bond in sum of Rs.25,000/- with 2 sureties in the like amount to the satisfaction of the learned Trial Judge.

25. Copy of this order be supplied dasti to learned counsel for the petitioner.

September 3, 2007 PRADEEP NANDRAJOG, J.
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